

**WAUKESHA COUNTY BOARD OF ADJUSTMENT
SUMMARY OF MEETING**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, March 24, 2004, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

BOARD MEMBERS PRESENT: James Ward, Chairman
Robert Bartholomew
Paul Schultz
Mary Voelker
Walter Tarmann

BOARD MEMBERS ABSENT: None

SECRETARY TO THE BOARD: Peggy S. Pelikan
Mary E. Finet

OTHERS PRESENT: Town of Merton Board of Adjustment
Larry H. Kassens, BA04:017, Architect
Joan Skimmons, BA04:017, petitioner/owner
John Miota, BA04:017, petitioner/owner
Donald and Jean Zaupa, BA04:013, petitioners
Walt Swenberg, BA04:013, neighbor
Atty. Tom Aul, BA04:017, petitioner/attorney
Tim Knepprath, BA04:015, petitioner
Jessica Knepprath, BA04:015, petitioner's daughter
Craig and Cindy Musbach, BA04:014, petitioners
Paul Dross, BA04:014, Former Board Chair of the Lake
Keesus Management District, neighbor.

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

SUMMARIES OF PREVIOUS MEETINGS:

Mr. Tarmann *I move we approve the Summary of the Meeting of March 10, 2004, subject to one correction. In the matter of BA04:010 Sheldon Knoll, LLC, the motion was seconded by Mr. Ward and carried with three yes votes rather than four.*

The motion was seconded by Mr. Bartholomew and carried with four yes votes. Ms. Voelker abstained for the reason of being absent at the March 10, 2004 meeting.

NEW BUSINESS:

BA04:013 DONALD ZAUPA

Mr. Tarmann

I move to approve the request per the staff recommendations and reasons set forth in the staff recommendation with the following changes:

Condition #1 shall be changed to read as follows:

“The existing detached garage, shed, and outhouse structure must be removed within six months of the issuance of the Zoning Permit for the new garage and breezeway addition.”

Condition #2 shall be changed to read as follows:

“Prior to the issuance of a Zoning Permit for the garage and breezeway addition, an after-the-fact Zoning Permit and Variances, if required, for the deck(s), must be applied for.”

Condition #3 shall be changed to read as follows:

“The proposed stairway must not be located any closer than 5 ft. to the east lot line, and the proposed garage/breezeway addition must not be located any closer than 8.5 ft. to the east lot line. The stairway and garage/breezeway addition must not be located any closer than 35 ft. from the shore and the 100-year floodplain and 25 ft. from the established road right-of-way of Nickels Point Road.”

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The existing detached garage, shed, and outhouse structure must be within six months of the issuance of the Zoning Permit for the new garage and breezeway addition.
- 2.) Prior to the issuance of a Zoning Permit for the garage and breezeway addition, an after-the-fact Zoning Permit and Variances, if required, must be applied for.
- 3.) The proposed addition must not be located any closer than 5 ft. to the east lot line, 35 ft. from the shore and the 100-year floodplain and 25 ft. from the established road right-of-way of Nickels Point Road.
- 4.) Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the proposed addition and any appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.

- 5.) A detailed Grading and Drainage Plan, showing existing and proposed grades must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. **No retaining walls are permitted**

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variances, with the recommended conditions, allows the petitioner reasonable use of the property, while maintaining the spirit and intent of the Ordinance. The addition, as proposed, will not cause additional negative impact to the natural resources in the area or the surrounding properties since the addition meets the Ordinance setback requirements from the shore and the 100-year floodplain. As conditioned, proper erosion and sediment controls must be made during construction. The residence is only non-conforming due to the offset from the east lot line and it has extreme physical characteristics, very steep topography. It should be noted that the petitioner was originally proposing a new detached garage but agreed to attach the garage to the house via a breezeway to allow the garage to be more conforming. Therefore, the proposal would be in conformance with the spirit and intent of the Ordinance.

BA04:015 TIM KNEPPRATH (MSI GENERAL) Hans Weissgerber Jr. - Owner

Ms. Voelker

I make a motion to adopt the staff's recommendation with the conditions and for the reasons as stated in the Staff Report, with the following additions to the reasons:

The safety reason should be noted regarding the end of Wisconsin Avenue or Hwy "R" and the exit ramp off of Hwy "16" being in close proximity to the plaza. Lighted signs would definitely be a safety feature that would allow people pulling off of the ramp or heading north on C.T.H "P" from the Oconomowoc Lake area to be able to anticipate and see people turning in or slowing down in order to turn into the plaza.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

- 1.) The monument sign must not be located any closer than 20 ft. from the established road right-of-way of C.T.H. "P".
- 2.) The monument sign must not exceed 12'4" in height, and 112 sq. ft. in size as proposed and

the two signs located on the building must not exceed 30 sq. ft. in size as proposed.

- 3.) A Zoning Permit must be approved and issued by the Planning and Zoning Division staff prior to the installation of the signs.
- 4.) If the sign designs change from the designs submitted to the Planning and Zoning Division staff, see attached (Exhibit “D-F”), and are no larger than proposed herein, a new design must be reviewed and approved by the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
- 5.) A Site Plan/Plan of Operation for the two signs located on the building must be approved and issued by the Town of Oconomowoc and the Waukesha County Park and Planning Commission prior to the issuance of a Zoning Permit for the proposed signage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested Variance, with the recommended conditions, allows the petitioner reasonable use of the property while maintaining the spirit and intent of the Ordinance. The property is located in a business district where signs are expected and needed to attract retail business. The sign as proposed complies with the road setback and should not impact the safety of traffic on C.T.H. “P”. The building is a multi-tenant plaza and it is reasonable that the signage denoting the name of the entire plaza be slightly larger than the signage for the individual tenants. Therefore, the request, as conditioned, will not adversely affect the surrounding property owners and would not be contrary to the public interest, and therefore is in conformance with the purpose and intent of the Ordinance.

BA04:017 JOAN D. SKIMMONS & JOHN M. MIOTA (Atty. Thomas E. Aul-Petitioner)

Mr. Schulz

I make a motion to approve a special exception from the road setback requirements to allow a garage addition to be a minimum of 48.31 ft. from the established road right-of-way of Bayridge Court, no closer than the existing house; and a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value requirement with the following conditions and reasons:

- 1. The proposed addition must be no closer to the established road right-of-way than the existing house and no closer than 20 ft. to the side lot lines.*
- 2. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the residence and proposed addition in conformance with the listed conditions must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.*
- 3. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the listed conditions, must be submitted to the Planning and Zoning Division staff for review and approval.*

4. *If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed addition does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake and not the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. No retaining walls are permitted.*

The reasons for this approval are that the addition would be no closer to the road than the existing house and it would be in conformance with all other setback requirements and if the lot were to have sewer in the future it would meet all of those setback requirements. The house is a substantial structure that has been remodeled before and the improvements already exceed 50% of the fair market value of the structure, therefore it is reasonable to allow a variance from that provision. The addition would not jeopardize the public's interest and would be in conformance with the spirit and intent of the Ordinance.

The motion was seconded by Ms. Voelker and carried unanimously.

The staff's recommendation was **denial** for the following reasons:

Granting a road setback Variance would be contrary to the public interest and would not be within the spirit and intent of the Ordinance. It has not been demonstrated, as required for a variance, that denial of the requested Variance would result in an unnecessary hardship. Unnecessary hardship is explained as whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. The petitioner currently has a 3,886 sq. ft. residence with a 514 sq. ft. garage and is proposing to add at 708 sq. ft. addition to the existing garage, 36 ft. from the edge of the established road right-of-way. It should be noted that were the property served by municipal sewer, the minimum road setback is 35 ft., therefore the petitioners would not need to apply for a variance from the road setback provisions of the Ordinance. It should also be noted that the Planning and Zoning division staff does not have an issue granting a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision; however, due to the fact that there is no place on the property that would allow the proposed addition without varying the offset or setback requirements of the Ordinance,

approving a variance from the remodeling a non-conforming structure in excess of 50% of its fair market value provision would not be within the spirit and intent of the Ordinance. Finally, the Town of Oconomowoc should consider ordering the shed located on the drainage easement and public access adjacent to the subject property to be removed or consider removing it themselves.

BA04:014 CRAIG AND CINDY MUSBACH

Ms. Voelker

I make a motion to approve the request according to the staff's recommendation, as stated in the Staff Report, with the following changes:

Condition #1 shall be changed to read as follows:

"Since the residence contains only a one-car garage, the petitioners are encouraged to purchase more than the minimum amount of land necessary to accommodate the proposed addition and should be advised that future requests for a floor area ratio variance to permit the construction of a garage are unlikely to be granted. The floor area ratio must not exceed 25.7% as proposed."

Condition #2 shall be removed.

The motion was seconded by Mr. Bartholomew and carried unanimously.

The staff's recommendation was for approval, with the following conditions:

1. Since the residence contains only a one-car garage, the petitioners are encouraged to purchase more than the minimum amount of land necessary to accommodate the proposed addition and should be advised that future requests for a floor area ratio variance to permit the construction of a garage are unlikely to be granted.
2. If no addition to the residence is constructed, no limits will be placed on the amount of additional land that may be purchased from the adjacent lot to the west.
3. A Certified Survey Map showing the re-configured parcel must be prepared by a registered land surveyor, approved by the Town of Merton and the Planning and Zoning Division staff, and recorded in the Waukesha County Register of Deed's office prior to the issuance of a Zoning Permit for an addition to the residence.
4. The addition shall be no larger than proposed on the plans submitted with the application. If the proposed addition is reduced in size, a complete set of revised plans must be submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit.

5. A detailed cost estimate must be submitted to the Planning and Zoning Division staff, prior to the issuance of a Zoning Permit.
6. Prior to the issuance of a Zoning Permit, a Stake-Out Survey showing the location of the residence and proposed addition must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval.
7. No trees or vegetation located farther than 30 ft. from the addition shall be removed unless a Landscaping and Re-Vegetation Plan is prepared by a registered landscape architect and approved by the Planning and Zoning Division staff.
8. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of an addition to the residence does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Although the property with the proposed residence will not meet the floor area ratio requirements, the total floor area ratio on the property with the addition will be reduced from its current ratio and the open space requirements will be met with the purchase of the additional land. The proposed addition would be no closer to the floodplain than the existing deck on the lake side of the residence. The proposed addition would not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of variances from the minimum lot area, minimum average lot width, and minimum lake frontage requirements to permit the lot area to be expanded; and the approval of variances from the floodplain setback requirement and remodeling a non-conforming structure in excess of 50% of its fair market value, to permit the construction of an addition to the residence, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance.

OTHER ITEMS REQUIRING BOARD ACTION:

Written materials, including Town of Delafield versus Winkelman and State of Wisconsin ex rel. Ziervogel versus Washington County Board of Adjustment, were distributed to the Board members on the recent Supreme Court decision related to Board of Adjustment cases.

ADJOURNMENT:

Mr. Batholomew

I move we adjourn this meeting at 8:30 p.m.

The motion was seconded by Ms. Voelker and carried unanimously.

Respectfully submitted,

Peggy S. Pelikan
Secretary, Board of Adjustment

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